

**IN THE MATTER OF PART 2/3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A SECTION 32 RESIGNATION APPLICATION
REGARDING WILLIAM E. SMITH
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee

Ken Warren, QC - Chair (Bencher)
Lou Pesta, QC - Committee Member (Bencher)
Cora Voyageur - Committee Member (Lay Bencher)

Appearances

Christine Blair – Counsel for the Law Society of Alberta (LSA)
Blair Yorke-Slader, QC and Patrick Breen, QC – Counsel for William E. Smith

Hearing Date

June 12, 2020

Hearing Location

Virtual Hearing

RESIGNATION COMMITTEE REPORT

Overview

1. William (Bill) E. Smith was admitted as a member of the Law Society of Alberta in 2004. He carried on practice in Calgary. He had a profile in provincial political circles and became somewhat more of a public figure in 2017 when he ran unsuccessfully as a mayoralty candidate in Calgary. Mr. Smith was the subject of a complaint initiated by the LSA upon an audit of his firm's accounts in early 2018. Mr. Smith effectively ceased practising law on March 7, 2018, when a custodian of his practice was appointed. He was administratively suspended on July 3, 2019 for non-payment of the ALIA insurance levy and has remained inactive since that date. He has effectively not practised law for over two years and his practice has been wound down and closed. Mr. Smith does not intend to practise law again.
2. Mr. Smith applied for resignation from LSA pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (the *Act*). Because Mr. Smith's conduct is the subject

of a complaint issued pursuant to Part 3 of the *Act*, this Resignation Committee (the Committee) was constituted to hear this application.

3. At the time of this hearing, Mr. Smith was an inactive member of the LSA and had no disciplinary record with the LSA.
4. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Mr. Smith, the Committee allowed the application pursuant to section 32 of the *Act* with oral reasons, and advised that a written decision would follow. This is that written decision.
5. In addition, the Committee ordered costs to be payable by Mr. Smith, in the amount set out in Exhibit 7, only in the event that he seeks to apply to the LSA for re-admission or to be relieved of his undertaking not to see re-admission to the LSA.

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing of Mr. Smith's resignation application proceeded.
7. The hearing was held using the Zoom platform. The Committee's members, counsel and Mr. Smith participated remotely. Mr. Smith was in attendance with his counsel for the entire hearing. The Committee met privately in caucus to deliberate before returning to render its oral decision.

Citations

8. Mr. Smith faced a complaint by the LSA under Part 3 of the *Act*.

Admitted Statement of Facts

9. The Admitted Statement of Facts is appended to this report. Portions of it have been redacted by Order of the Committee, as discussed below.

The Evidence

10. The evidence consisted of an Admitted Statement of Facts. The Committee also heard orally from Mr. Smith in response to a question from the Committee. Mr. Smith's response was unsworn but the Committee found it to be candid, direct and sincere.

The Submissions of the Parties

11. LSA counsel supported Mr. Smith's application for resignation, agreeing that his resignation pursuant to section 32 of the *Act* served the public interest. As such, the Committee considered this application to be tantamount to a joint submission and therefore deserving of deference, unless it was demonstrably unfit or unreasonable, or contrary to the public interest.

Analysis

12. The issue to be determined by this Committee was whether it was in the best interests of the public to permit Mr. Smith to resign pursuant to section 32 in the face of an unresolved conduct matter. Under the *Act*, a member may apply to resign under either section 32 or section 61. There is a material distinction between these applications. Pursuant to section 61 of the *Act*, the member's resignation amounts to a deemed disbarment if accepted, triggering certain notice requirements to the bench, the bar and other Canadian law societies under section 85(1) of the *Act*. Under section 32 of the *Act*, the application is merely one for resignation.
13. Resignation committees of the LSA have permitted members who faced serious conduct proceedings to resign pursuant to section 32 where the public interest may still be served without requiring either a public hearing into outstanding citations or a deemed disbarment. In those cases, resignation committees were satisfied that the member's conduct had been investigated and that certain mitigating factors existed that offer understanding and even explanation for the member's conduct. Equally importantly, in each instance, the applications for resignation were supported by the member's undertaking never to re-apply for admission to the LSA.
14. A resignation under section 61 of the *Act* is a deemed disbarment. In considering whether a resignation application ought to proceed under section 61, the Committee must consider whether the alleged conduct would likely result in disbarment if the matter were to proceed to a hearing and the citations proved. The Committee's view was that disbarment of Mr. Smith was an extremely unlikely outcome if the subject of the complaint proceeded to a hearing. The Committee was of the view that Mr. Smith's application was properly brought under section 32 of the *Act*.
15. The conduct of Mr. Smith that led to the complaint was acknowledged by LSA counsel to be an isolated instance and the default was rectified by Mr. Smith. He cooperated during the investigation and admitted his conduct early in the process. Mr. Smith expressed remorse and was embarrassed by this conduct.
16. Mr. Smith suffers from a longstanding illness for which he continues to receive treatment. The Committee received evidence from Mr. Smith and one of his treating

professionals regarding the history of Mr. Smith's illness and the possible impact of this proceeding on his illness. The Committee concluded:

- (a) Mr. Smith's illness probably contributed to the poor judgement exercised by Mr. Smith that led to the complaint; and
 - (b) public disclosure of particulars of Mr. Smith's illness and his conduct giving rise to the complaint would likely negatively impact Mr. Smith's condition and well-being.
17. In the Committee's view, it is in the best interest of the public and members of the LSA to permit Mr. Smith to resign prior to the resolution of the outstanding complaint. There are mitigating factors that offer understanding of Mr. Smith's conduct and assurances of the public's protection.

Decision

18. The Committee finds that the Admitted Statement of Facts is in an acceptable form. It orders that paragraphs 4, 5, 6, 7, 8 and 9 and Schedule C be redacted in their entirety.
19. The LSA regulates in the public interest. The Committee acknowledges the need for transparency in regulating the conduct of LSA's members. However, the LSA also has an interest in not subjecting a member involved in the conduct process to unnecessary prejudice. Mr. Smith's public profile perhaps increases the public's interest in the nature of the complaint and this Committee's decision. In the Committee's view, the well-being of Mr. Smith, that the Committee is satisfied would be detrimentally impacted by greater transparency, outweighs any public interest that might be served by disclosure of the particulars of the complaint or his illness.
20. It is for the foregoing reasons that the Committee ordered redactions to the Agreed Statement of Facts and did not require a Notice to the Profession. The facts of this case are unusual:
- (a) the conduct that breached the rules of the LSA was isolated and the default was rectified;
 - (b) there is no evidence of any prejudice to a client or a complaint by a client;
 - (c) Mr. Smith ceased practising almost two years ago, his practice has been wound up, and he has given an undertaking not to reply for admission to the LSA; and
 - (d) Mr. Smith has a high profile in the community which will exacerbate the negative impact on his illness that is likely to result from publication of particulars about the conduct giving rise to the complaint and his illness.

21. It is the Committee's conclusion that the public interest is served sufficiently in the circumstances by permitting redaction of the Admitted Statement of Facts as ordered.
22. Accordingly, based on the evidence considered, the Committee determined that it was in the best interests of the public to accept the application of Mr. Smith to resign pursuant to section 32 of the *Act*, effective June 12, 2020.
23. Complaint C020180432 shall be discontinued.
24. The Committee accepted the undertakings made by Mr. Smith.
25. The Committee has reviewed the estimated statement of costs, as prepared by the LSA and set out in Exhibit 7. Most of the costs arise from the custodianship. The Committee has determined that Mr. Smith must pay these costs if he re-applies for re-admission to the LSA or to be relieved of his undertaking not to seek re-admission.
26. Pursuant to subsection 32(2) of the *Act*, Mr. Smith's name will be struck off the roll. The roll shall reflect that Mr. Smith's application under section 32 of the *Act* was allowed on June 12, 2020.

Concluding Matters

27. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Smith will be redacted and any further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).
28. A Notice to the Profession will not be issued.
29. A Notice to the Attorney General is not required.
30. Mr. Smith has suffered a great loss, apart from anything else, in giving up the practice of law. The Committee has balanced any public interest in the details of a fall from grace of a public figure with the private interest of a lawyer wishing to exit the profession gracefully under difficult circumstances. The Committee wishes Mr. Smith good health and that his recovery continues.

Dated at Calgary, Alberta, this 21st day of July, 2020.

Ken Warren, QC - Chair

Lou Pesta, QC

Cora Voyageur

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

**IN THE MATTER OF A RESIGNATION APPLICATION BY
WILLIAM E. SMITH
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ADMITTED STATEMENT OF FACTS

A. BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the “LSA”) on June 1, 2004.
2. Between July 25, 2014 and March 7, 2018, I practiced law through my own firm.
3. On July 3, 2019 I was suspended by the Law Society of Alberta for non-payment of the Insurance Levy. I made the decision to remain inactive due to concerns for my own health and my obligations to the public and the profession. To this end my practice has been wound down and closed.

B. LSA COMPLAINT CO20180432

4. [...]
5. [...]

C. MY MEDICAL CONDITION

6. [...]
7. [...]
8. [...]
9. [...]

D. APPLICATION FOR RESIGNATION

10. I am applying to resign as a member of the LSA pursuant to section 32 of the *Legal Profession Act*. I understand the nature and consequences of the Admission.

11. I am making this application to avoid the emotional hardship of a Law Society hearing; to prevent the corresponding inconvenience to witnesses and panel members; and because I am unable to practice law due to my medical condition.
12. I admit the facts contained in this Admitted Statement of Facts and have signed it freely and voluntarily, without any compulsion or duress, and with the benefit of legal advice.

ALL OF THESE FACTS ARE ADMITTED TO THIS 13 DAY OF May, 2020.

“William Smith”

WILLIAM E. SMITH